THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.769 of 2006

Dated: 24-01-2006

Imthiaz and four others.

..... PETITIONERS

AND

The Gram Panchayat, Madakasira, and two others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NO.769 of 2006

ORDER:

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The five petitioners are the residents of Madakasira Village in Anantapur District. They filed the instant writ petition seeking a Writ of Mandamus declaring the action of the first respondent namely Madakasira Gram Panchayat in issuing notice of eviction to the petitioners as illegal and arbitrary.

The case has chequered history. In the nature of disposal that is being given to this case, it is not necessary to elaborate the background of the case. Suffice to say that from 1986 onwards, the petitioners have been successfully preventing the Revenue Officials as well as the Panchayat Officials from evicting them. In 2003 alleging that there was a serious threat of dispossession, they filed a writ petition being W.P.No.7984 of 2003. The same was disposed of by this Court on

23-03-2005 directing the Mandal Revenue Officer to conduct enquiry into the matter after giving notice to the petitioners and to consider their request for assignment of the land. The order of the learned Single Judge was modified by a Division Bench of this Court in W.A.No.782 of 2005 on 19-04-2005 directing the Mandal Revenue Officer to give notice to the Gram Panchayat.

Be it as it may, after the Mandal Revenue Officer issued notice to the petitioners and the Gram Panchayat and passed orders on 27-12-2005 rejecting the claim of the petitioners for assignment of the land allegedly in their possession, *inter alia,* on the ground that as per the resettlement register the land in Survey No.414-4 under the occupation (by way of encroachment) of the petitioners was alienated to the Gram Panchayat in May, 1974 and that the land is required by the Madakasira Gram Panchayat, the request of the petitioners for grant of pattas was rejected. Aggrieved by the same the petitioner preferred an appeal on 09-01-2006 before the third respondent and also moved for stay of dispossession. Meanwhile having come to know that the first respondent issued a notice to the petitioners calling upon them to remove the encroachments, on
10-01-2006 they moved this Court. They alleged that the Revenue Divisional Officer was not available to enable them to obtain appropriate orders of stay of eviction. This Court entertained the writ petition and while ordering notice before admission, stayed dispossession.

Elaborate submissions are made by the learned counsel for the petitioners as well as the learned standing counsel for the first respondent.

After hearing the submissions one thing becomes clear that the possession of the petitioners of panchayat land or village site as the case may be, is not denied. The Gram Panchayat also does not deny the fact that the petitioners' appeal before the third respondent is pending. In view of this, it is improper for this Court to express any opinion on the merits of the case or to entertain the writ petition when an appeal remedy is already availed. The petitioners are given liberty to approach the third respondent and obtain appropriate interim orders on their stay application. As and when the petitioners approach the third respondent, the third respondent shall pass orders on the application for stay within a period of one week from the date of receipt of a copy of this order. The third respondent is also directed to dispose of the appeal itself after giving notice to the Gram Panchayat as well as the petitioners within a period of four weeks from the date of receipt of a copy of this order. To enable the petitioners to obtain appropriate orders preventing Gram Panchayat from evicting them during the pendency of the appeal, it would be appropriate to order *status quo* as on today for a period of ten days.

With the above observations and directions, the writ petition is disposed of. No costs.

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(**V.V.S.RAO, J**)

24th January 2006

Note:

Issue CC by 26-01-2006.

B/o

ghn